

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION**

HORTON HOMES, INC.,)	
)	
Plaintiff,)	
)	
v.)	CIVIL ACTION NO. 2:07-cv-506-MEF
)	
LARUE BANDY, MARIE BANDY,)	
PATRICK PRITCHETT, WILLIAM)	
SHANER, ELSIE FONDREN)	
AVERETTE, WILLIAM CRUTHIRDS,)	
and SHERRIE CRUTHIRDS,)	
)	
Defendants.)	

**DEFENDANT'S RESPONSE TO PLAINTIFFS MOTION TO PERMIT
TESTIMONY BY CONTEMPORANEOUS TRANSMISSION AND MOTION
FOR CONTINUANCE**

Comes now your Defendant, William Shaner, by and through his counsel of record and hereby respond to Defendants Motion to Permit Testimony by Contemporaneous Transmission as follows:

1. On October 16, 2007 this Court rescheduled Plaintiff's Motion for Preliminary Injunction for October 26, 2007.
2. Counsel for Plaintiff Shaner, Mike Harper had a conflict on that date and anticipated filing a Motion to Reschedule said hearing.
3. Before Harper had an opportunity to file said motion, we received a faxed letter from Sid Frazier (copy attached) the following day October 17, 2007. (See attached Exhibit "A").
4. Mr. Frazier indicated that if we did not agree for testimony to be taken by video he would request a continuance for which we, of course, would not object due to Harper's conflict.
5. The following day October 18, 2007 Frazier filed his Motion to Permit Testimony by Contemporaneous Transmission and on that same date this court ordered Defendants to show cause on or before October 22, 2007 why said motion should not be granted.

6. Plaintiff believes that the testimony and credibility of Dudley Horton may be significant in this case and that Defendant's right to cross examine, and this courts ability to observe the witness in person, is significant enough to require his attendance, particularly considering the fact that this court will be viewing this testimony ore tenus.
7. That neither side will be prejudiced by a reasonable continuance in order for Mr. Horton to personally attend this hearing.

Wherefore, above premises considered, Defendant Shaner respectfully prays this Honorable Court to continue this cause until such time as Mr. Horton is available to attend said hearing and to require his attendance in person.

Respectfully submitted on this the 22nd day of October, 2007.

/s/ Frank H. Hawthorne, Jr.

Frank H. Hawthorne, Jr. (HAW012)

/s/ Randy Myers

Randy Myers (MYE003)

OF COUNSEL:

Hawthorne & Myers, LLC
322 Alabama Street
Montgomery, AL 36102
(334) 269-5010
(334) 834-0080

OF COUNSEL:

Michael S. Harper
P.O. Box 780608
Tallassee, AL 36078
(334) 283-6855
(334) 283-6858 Fax

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing has been served upon all counsel of record by fax transmission only, this the 22nd day of October, 2007:

Sydney F. Frazier, Jr., Esq.
Cabaniss, Johnston, Gardner, Dumas & O'Neal, LLP
2001 Park Place North, Suite 700
Birmingham, AL 35203

James L. Paul, Esq.
Thomas C. Grant, Esq.
Chamberlin, Hrdlicka, White, Williams & Martin
191 Peachtree Street, N.E., 34th Floor
Atlanta, GA 30303

/s/ Frank H. Hawthorne, Jr.
OF COUNSEL